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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/624,439

07/24/2000

Jonathan Ellenberg

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09/04/2008

BAKER BOTTS L.L.P.

2001 ROSS AVENUE

SUITE 600

DALLAS, TX 75201-2980

EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

3696

NOTIFICATION DATE

DELIVERY MODE

09/04/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/624,439	<b>Applicant(s)</b> ELLENBERG ET AL.	
	<b>Examiner</b> DANIEL S. FELTEN	<b>Art Unit</b> 3696	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/27/2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11,34,35 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11,34,35 and 40-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11, 34-35 and 40-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Arkes (US 7,152,042).

As in claim 1, Arkes discloses a method for receiving points from a customer using a computer terminal for merchandise being offered in the auction (see Arkes, fig. 10, Abstract, column 1, line 55 to column 2, line 14; and column 2, line 57 to column 3, line 3);

As in claim 2, 41, receiving registration information from the customer (see Arkes, Abstract; column 1, lines 56-65; column 3, lines 17-23; and column 4, lines 37+; and column 12, lines 8-14);

As in claim 3, 42 wherein the customer registration includes payment information (see column 9, lines 16-24);

As in claim 4, 43, providing a preview of the merchandise being offered in the auction (see Arkes, column 1, lines 58-65);

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As in claim 5, 44, authenticating the customer (see fig. 9: 304; column 11, line 65-67) and allowing the customer to access a reward points balance (Abstract; column 1, line 56 to column 2, line 14)

As in claim 6, allowing the customer to purchase additional reward points for use in the auction (see column 10, lines 47-51; and column 12, lines 40-58);

As in claim 7, 45, wherein the customer is allowed to purchase a specific number of reward points at an exchange rate (see column 12, lines 59-62),

As in claim 8, further comprising determining a cost for the reward points purchased and transmitting a request for payment for the cost of the reward points (see column 12, lines 59-62);

As in claim 9, further comprising allowing a purchase of reward points on a floating basis (see column 12, lines 59-62)

As in claim 10, deducting reward points expended in the auction from the rewards point balance (see column 10, lines 37-44);

As in claim 11, determining a cost for purchasing reward points expending in the auction in excess of the customer's reward points balance and transmitting a request for payment for the cost of the reward points (see column 12, lines 59-62)

As in claim 34, determining a minimum opening bid price by applying an auction pricing discount factor in reward points based on merchandise being auctioned and the time period of the auction (see fig 12. "Minimum Opening Bid 49");

As in claim 35, determining a bid increment.( see fig. 12 "Minimum Increment 5");

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As in claim 40, receiving a bid in cash from a customer using a computer terminal for merchandise being offered in the auction (see column 12, lines 59-62),

wherein at least a portion of the bid is paid for by reward points converted to a cash value (see column 12, lines 59-62)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL S. FELTEN whose telephone number is (571)272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel S Felten  
Primary Examiner  
Art Unit 3696

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Primary Examiner, Art Unit 3696